

35
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JUNE, 1998

BEFORE

THE HON'BLE MR.JUSTICE V.K.SINGHAL

WRIT PETITION NOS: 19314-323/98 c/w 19481-536/98
and W.P.20030-20119/1998

BETWEEN: 19314-323/1998

1.Karnataka Wine Merchants Assn., (R)
185, Arya Idigar Sangha Buildings
Seshadripuram
Bangalore 20.
rep by its Secretary
Sri.A.Mariyappa

2.A.Mariyappa Cl.2 Licence holder
s/o Arsappa,
M/S. Sadhana Wine Store,
372A, 50' Road,
Hanumanthanagar
Bangalore 19.

3. G.H.Obaiah
s/o Krishnappa
CL 2 Licence Holder
M/S.Royal Wine Store,
28, M.T.Street,
Basavangudi
Bangalore-4.

4. H.Halappa
s/o Hiriyanka
Navarathna Wine,
Kurubarahalli
Basaveshwaranagar
Bangalore.

5. G.Kempanna
s/o Ganangappa
CL 9 Licence Holder
M/S.Nethravathi Bar and Restaurant
249, Srirampura
Bangalore.

6. HC Kemppe Gowda
s/o Huchiah
CL 2 Licence Holder,
Shivasri Wine Housing Board
Colony, Vijayanagar
Bangalore.

7. V.Muthu
CL 2 Licence Holder
M/S Muttu and Store EAT
Street, Basavangudi
Bangalore-4.

8. B.P.Sreenivasa
CL Licence Holder
Santhosh Wine Store,
Vijayanagar
Bangalore.

9. N.Udya, CL 9 Licence Holder
s/o Nanjundappa
Mohan Kiran Bar and Restaurant,
BG Main Road,
Belakanahalli
Bangalore.

10. Chengappa
CL -9
s/o B. Rappa
Shamanth Bar and Restaurant,
Kalasipalya
Bangalore.

PETITIONERS

(Mr.R.N.Narasimhamurthy Standing counsel for
M/S.Shetty and Hegde Assts.)

AND:

1. State of Karnataka
by its Secretary and Commissioner,
Excises and Financial Department,
Vidhana Soudha
Bangalore-1

2. Excise Commissioner in
Karnataka, Kithuruchannamma Circle,
Bangalore.

3. Dy Commr of Excise Bangalore
District, Bangalore.

RESPONDENTS

(By Smt.Sujatha, HCGP)

The petitions are filed praying to declare that the amendment made to sub rule 1 of rule 8 of the Karnataka Excise (sale of Indian made Foreign Liquor) Rule 1968 and insertion of rule 8A is illegal and quash the same.

These petitions coming on for preliminary hearing this day, the Court made the following order;

(order at page-)

W.P.NOs.19481-19536/1998

1. Wholesale Wine Merchants Assn (R)
under Karnataka Societies Registration Act
828 B, 'Sri Giri'
Modi Hospital Road, Rajajinagar,
By its Secretary, T.Ramu.

2. T.Giriyappa
CL 1 Licencee
M/S. Srinivasa Enterprises,
2nd block, Rajajinagar
Bangalore.
3. R.Jitendra Gowda,
CL 1 Licencee
3rd Cross Malleshwaram
Bangalore.
4. J.M.Shivanna
CL 1 Licencee
M/S.SLN Wines,
Ist Stage Indiragagar
Bangalore
5. K.Mukunda Shenoy
CL -1 Licencee
M/S Srinivasa Wines
Jogupalya Ulsoor,
Bangalore.
6. J.Krishnamurtha
CL1 Licencee.
M/S.Krishna Enterprises,
1st Cross, Old Madivala Road,
Bangalore.
7. A Ananda Rao
Managing Partner,
CL 1 Licencee,
M/S. Anupama Wine Distributors,
Jayanagar, Bangalore.
8. T.Srinivasa
s/o late K. Thimmaiah
cl-1 Licencee,
Kapali Wine Stores,
39, 8th Main
Shivanagar,
Bangalore.
9. Anu Wines,
CL 1 Licencee
by its partner, Shkar
Prakashnagar,
Bangalore.
- 10.G.O.Krishna
s/o GK Obaiah
CL*1 Licencee
269 10th cross,
4th Main NRColony
Bangalore.

11. Uma Vinod,
w/o Sri.M.P.Vinod,
CL 1 Licencee,
132, Railway Parallel Road.
Bangalore
by GPA Holder D.Jayaram
a/o D.Govindappa
12. R.Jayavelu
CL1 Licencee.
Delus Wines
NHS Road,
Bangalore.
13. K.B.Saroja
CL1 Licencee
Banashankar Enterprises
BSK II Stage
Bangalore.
14. H.P.Srinivas
CL 1 Licencee
I Main Road,
Madivala
Bangalore.
15. H.Sudhar
s/o Hiriyanna Shetty
CL 1 Licencee
Srinidhi Enterprises,
Jaynagar,
Bangalore.
16. A.Maniswamy,
CL-1 Licencee
Chandara Distributors
Laxmipura Bangalore.
Bangalore
17. Thirumala Agencies,
CL-1 Licencee
II Main III Cross,
Ganganahalli, Bangalore
by its Partner T.Jayashankar
18. P.Murali
s/o Parankusam
CL 1 Licencee,
Someshwaranagar,
Bangalore.
19. M.Mohan Set,
M.D.Shet, CL-1 Licencee,
Antaragange Road,
Kolar.

20. D. Chandramma
CL-1 Licencee
Shiva Enterprises
Wilson Garden.
Bangalore.
21. M/S. Santhosh Wines,
CL-1 Licencee
Lalbagh Road,
Bangalore Urban District.
22. M/S. Blue Beel Wines,
CL-1 Licencee,
Khadar Shariff Garden
Bangalore.
23. S. R. Shantaram
CL-1 Licencee
Joy Wines, Old Madras Road,
Ulsoor,
Bangalore.
24. S. Anantharao
CL-1 Licencee
Shiravanthe Traders
KK Pura Road,
Bangalore.
25. R. Gopalaiah
CL 1 Licencee
Malleshwaram
Bangalore.
26. S. Venkatesh
CL 1 Licencee
Nanjundeshwara Enterprises,
Magadi Road,
Agrahara Basarahalli
Bangalore.
27. Smt. Muniyamma
CL-1 Licencee
Padmanabha Wines,
Albart Victor Road,
Bangalore.
28. V. Pillappa
CL 1 Licencee
Sri. Mahalakshmi Enterprises,
Bangalore Urban District.
29. B. R. Bharathi
Late Raghavendra Bhat,
CL-1 Licencee
Karnataka Beer and Wine Traders,
1st Main, Gokula, Bangalore.

30. T.Ramu
CL-1 Licencee
M/S.Karnataka Beer and Wine Traders,
1st Main, Gokula
Bangalore.

31. A.D.Ashok Kumar,
s/o A.R.Dasappa
CL 1 Licencee,
Gurushree Enterprises,
Basaveshwarnagar,
Bangalore.

32.C.Ramaiah
CL-1 Licencee
Mysore Road, Bangalore.

33. Narasimhaiah
CL-1 Licencee
M/S.Naveen Enterprises,
M.C Layout, Vijayanagar,
Bangalore.

34. Venkataramaiah
s/o late Dasaiiah Gowda,
Tejaswini Agencies,
Attiguppa Bangalore

35. R.L.Chemicals Pvt Ltd.,
by its Director,
BA Lakshman CL-1 Licencee,
Someswaranagar,
Bangalore.

36. Smt.Kanthamma
CL-1 Licencee
KalaEnterprises
Sarakki , Bangalore.

37. Smt. Girijamma
w/o Mahadevappa CL-1 Licencee,
Neelakanteshwara Wine Stores
OTC Cross Road,
Bangalore.

38. A Suresh,
s/o Aswathnarayana
CL-1 Licencee,
MrsS.Shaktivel Trading Co.,
Devanathachar Street,
Bangalore.

39. S.N.Ashok Kumar,
s/o S Narasusa, CL-1 Licencee,
Anil Agencies, Chamarajpet,
Bangalore.

40. K.Rajashekar,
Cl-1 licencee,
M/S. Chamundeshwari Agencies,
West of Chord Road, Bangalore.

41. T.Ramu
CL *1 licencee,
ACR Enterprises,
Bangalore Town
Bangalore Urban District.

42. D.V.Raghunath
CL-1 Licencee,
Ramadurga Agencies,
Bangalore.

43. B.L.Veerabhadran
cl-1 licencee,
Dewar Wines
7, Walton Road,
Bangalore.

44. M/S.Ashok Kumar
s/o MS Narayana Rao
Cl-1 Licencee
Vani Wines,
Srikanteshwarangar.
Nandini Layout,
Bangalore.

45. Prasad Reddy,
Cl-1 Licencee,
Lords Group of Wines,
Bangalore City.

46. Vishakanta
Cl-1 Licencee,
Sree Bhavani Wines
Bangalore City.

47. Mohammed Ali
CL-1 Licencee,
Durga Enterprises,
Bangalore City

48. Ravindra
Cl-1 Licencee,
Shilpa Enterprises,
Bangalore City.

49. S.P.Hanumanthaiah
Cl-1 Licencee,
Srinivasa Stores,
Yelhanka, Bangalore.

50. Ramakrishna
Cl-1 Licencee,
Ramakrishna Wines
Bangalore City

51. Narake
Cl-1 Licencee
Srinivasa Wines
Vasanthanagar

52. Smt.Somashekar
Nandi Enterprises,
Cl-1 Licencee
Bangalore City

53. Raju
Cl-1 Licencee
Guru Raghavendra Wine Agencies,
Bangalore City.

54. Meera Moham Investments Pvt Ltd.,
Cl-Licencee
by its Director,
Sri.Balaji,

55. V. Reddy,
Cl-1 Licencee
NS Enterprises,
Bangalore City.

56. Sudhakar,J.P.
s/o J.P.Narayanaswamy
CL-1 Licencee,
Bindu Enterprises,
Bangalore.

PETITIONERS

(By Sri.G.K.Bhat, Adv.,)

AND:

1. The State of Karnataka
by its Additi nal Chief Secretary,
and Principal Secretary to Government,
Vidhana Soudha
Bangalore.

2. The Excise Commissioner in
Karnataka
Vokkaligarasangha Building,
Channamma Circle,
Bangalore.

3. The Deputy Commissioner of Excise,
Bangalore Urban District.

4. The Deputy Commissioner,
Bangalore Urban District,
Bangalore.

5. The Deputy Commissioner of Excise,
Kolar District,
Kolar.

6. The Dy. Commor.,
Kolar District.
Kolar

(By Smt.S.Sujatha, HCGP)

These petitions are filed praying to quash
Annexure-C dtd.18-6-1998 and to declare the same
as illegal.

W.P.NO. 20030-20119/1998

1. K.R.Iliger,
Cl-2 Licencee,
Akialur.
Hanagal Taluk
Dharwad District.

2. N.K.Ilakal
S/o Ambasa Ilakal
Cl-2 Licencee
Hubli Town,
Dharwad District.

3. V.R.Iligar
CL-2 Licencee
Akkialur
Hanagal Taluk
Dharwad Dist.

4. B.T.Magajikondi
Cl-9 Licencee
Sapna Delux,
Vidyanagar, Hubli Town,
Dharwad District.

5. N.T.Baddi
Cl-2 Licencee
Sahan Wines, Hubli Town,
Dharwad District.

6. V.R.Walwekar,
Cl-2 Licencee
Akshata Wines,
CBT Hubli Town
Dharwad District.

7. Ambika Wines,
Cl-2 Licencee,
represented by Partner
Yellappa V Katave,
s/o Vittalsa Katve,
HUBLI Town Dhat District.

8. Kishor Shankar Meharwade
s/o Shankar Meharwade,
Cl-9 Licencee,
Akshay Bar and Restaurant,
Hubli Town,
Dharwad District.

9. Suryakanth M. Habeeb,
Cl-9 Licencee,
Gadag City,

10. M/S. Classic Bar and Restaurant
Cl-9 Licencee, by its partner,
Deepak Jejansa Powar
s/o Jenjansa Powar
Gadag Town, Gadag Dist.

11. Kishor Tejansa Powar
s/o Tejansa Powar,
Cl-2 Licencee,
Gadag Town.

12. Anand L. Butbur
Cl-9 Licencee,
Burbur Bar and Restaurant,
Gadag Town, Gadag District.

13. M/S. Sagar Bar,
Cl-9 Licencee,
by its partner,
Suresh Gurnathasa Chavan,
s/o Gurnathasa Chavan
Hubli, Dharwad District

14. M/S. Vijayalakshmi Enterprises,
Cl-9 Licencee, by its partner
Ramesh Nagappa Shetty,
Nagappa Shetty,
Hubli Town, Dharwad District.

15. Parasuram Yallappa Dhongdi
Yallappa Dhongdi
Cl-2 Licencee
Hubli Town,
Dharwad District.

16. M/S. Hotel Sri,
Cl-9 Licencee
by its partner,

Narayan Tejappa Shetty,
s/o Tejappa Shetty
Hosur-Hubli
Dharwad District.

17. H.Maruthi
Cl-2 Licencee
Old Hubli.
Dharwad District.

18. M/S.Adarsha Bar,
Cl-9 Licencee,
by its partner
N.Ranganath
Hubli Dharwad District.

19.N.B.Habib,
Cl-2 Licencee,
Hubli Town,
Dharwad District.

20. Chandrakanth Lakshmansa
Basava, Cl-9 Licencee,
Hubli Town,
Dharwad District.

21.Vasudev V.Magajikondi,
s/o Vithalasa Magajikondi
Cl-9 Licencee,
Hubli Town,
Dharwad District.

22.Ningusa Ramachandrasa Habib,
Cl-9 Licencee,
Hubli Town,
Dharwad District.

23. Madhusa Laxmana Habib,
s/o Laxmana Habib,
Cl-2 Licencee,
Hubli Town, Dharwad District.

24. Purandara Achchanna Shetty,
Cl-9 Licencee,
Dajibanpet,
Hubli, Dharwad District.

25.M/S.Ajantha Bar and Restaurant,
by its partner, Cl-9 Licencee,
Ranganath Hanumanthasa Baddi,
Old Hubli, Hubli Town.

26.Yallappa L.Baddi,
Cl-9 Licencee,
Sagar Bar, Ullagaddi streetm
Hubli Town, Dharwad District.

27. Satish Shetty,
Cl-9 Licencee,
Hubli Town,
Dharwad District.

28. M/S. Prabhat Bar and Restaurant,
Cl-9 Licencee,
by its partner Ratnakar
s/o Timmappa Shetty,
Hubli Town
Dharwad District.

29. Keshawasa Narayansa Walvekar
Cl-2 Licencee
Hubli Town, Dharwad District.

30. M/S. D.P. Dinakar,
Cl-2 Licencee,
Kaveri Wines by its partner,
Moahn V. Kabade
Hubli Town,
Dharwad District.

31. Dasharatsa T. Habib,
s/o Tejansa Habib
Cl-9 Licencee,
Hubli Town
Dharwad District.

32. Smt. Laxmibai K. Pawar
Cl-9 Licencee,
Hubli Town,
Dharwad District.

33. Khode Wine Peg Bar
Cl-9 Licencee,
by its partner
Tippanna N. Khode,
Hubli
Dharwad District.

34. M/S. trupti Bar and Rest.,
Cl-9 Licencee,
by its partner,
Tippanna N. Khode,
Hosur Hubli
Dharwad District.

35. Smt. Nirmal Yellappa Baddi
Cl-9 licencee, Hubli Town,
Dharwad District.

36.V.R.Reddy,
Cl-2 Licencee,
Hubli Town,
Dharwad District.

37.Manohar Mursa Habib,
Cl-9 Licencee,
Hubli Town,
Dharwad District.

38.M/S Unique Bar and Rest.,
Cl-9 Licencee,
by its partner Deepak T.Pawar,
Hubli Town. Dharwad District.

39.M/S.Excellent Bar and Rest.,
Cl-9 Licencee,
by its partner Deepak T.Pawar,
Hubli Town,
Dharwad District.

40.Tarasa G.Habib,
Cl-2 Licencee,
Hubli Town,
Dharwad District.

41.Srikanth V.Katawatte,
Cl-9 Licencee,
Hubli Town
Dharwad District.

42.M/S.M.V.Katawate and Co.,
Cl-9 Licencee,
by its partner,
Mohan V.Khatawate,
Hosur Hubli. Dharwad Dist.

43.Smt.A.S.Kalal,
Cl-2 Licencee,
Hubli Town,
Dharwad District.

44.Narayanasa Lakshmansa Khode,
Cl-9 Licencee,
Hubli Town,
Dharwad District.

45.M/S.Prashanth Foreign Liquor Centre,
by its partner
Srikanth Ramansa Habib,
Cl-2 Licencee,
Hubli Town,
Dharwad District.

46. M/S.Vinayaka Wines,
Cl-2 Licencee,
by its partner,
Srikanth Ramansa Habib,
Hubli Town,
Dharwad District.

47. R.R. Niranjana
Cl-9 Licencee,
Hubli Town,
Dharwad District.

48. Gajanan Y. Walvekar
Cl-2 Licencee,
Hubli Town,
Dharwad District.

49. M/S. Sri Raghavendra Bar and Rest.,
by its partner Nemiraj R Habib,
Cl-9 Licencee,
Hubli Town,
Dharwad District.

50. M/S. Vinayaka Wines,
Cl-2 Licencee, by its partner,
Shrikanth R. Habibi
Hubli Town, Dharwad Dist.

51. M/S. Niskin Bar
Cl-9 Licencee, by its partner,
Devarajsa H. Misking,
Neharu Station Road,
Hubli, Dharwad District.

52. M/S. Sringer Bar,
Cl-9 Licencee,
by its partner,
Murali G. Dharmadas
s/p Ganapatsa,
Station Road,
Hubli, Dharwad Dist.

53. M/S. Sringer Wines,
Cl-2 Licencee,
by its partner
Premánath G. Dharmadas
Station Road,
~~New Market~~,
Hubli Dharwad District.

54. M/S. Golden Wines
Cl-2 Licencee,
by its partner
Srinivasa K. Jitury
s/o Keshava
New Market,
Hubli, Dharwad Dist.

55.M/S.Parag Bar,
Cl-9 Licencee,
by its partner
Ashokkumar R.Shetty,
Station Road,
Hubli Dharwad District.

56.Nagaraj Bhaskarasa Habib,
Cl-9 Licencee,
Hotel Vikram Bar and Rest.,
Lymington Road,
Hubli Road,
Dharwad District.

57.Girish S. Shetty,
Cl-2 Licencee,
Near Busstand,
Hubli Town,
Dharwad District.

58. Deepak Bar and Rest.,
Cl-9 Licencee
Jayaram Chandrayya Shetty,
Club Road,
Hubli Dharwad District.

59.M/S.Pallavi Bar and Rest.,
Cl-9 Licencee,
by its partner,
Raju Yallappa Pawar
Hubli Town,
Dharwad District.

60.M/S.Hotel Vaishali,
Cl-9 Licencee,
by its partner
Udaya Kamath,
Station Road,
Hubli Town,
Dharwad District.

61.Srisai Bar and Rest.,
Cl-9 Licencee,
Deepak Pandurangasa Magarkond
Swimming pool complex
Hubli Dharwad Dist.

62.M.B.Kalal
Cl-2 Licencee,
Manju Wines,
Aadur, Hanagal Taluk
Haveri Dist.

63.S.G.Kalyani,
Cl-2 Licencee,
M/S.Santosh Wine shop
Hanagal
Haveri District.

64. S.G.Kalyani,
Cl-2 Licencee,
Kalyani Wine Shop
Hanagal
Haveri Dist.

65.S.D.Laxminarayana
Cl-2 licensee
Tilavalli
Hanagal Taluk,
Haveri District.

66. R.Raghunath
Proprietor M/S.Maharaja Liquor Agency,
Cl-1 Licencee,
Hubli.

67.B.p.Narendra
Cl-2 Licencee,
Bhavani Wines,
Tilavalli,
Taluk Hanagal
Haveri District.

68.M.S.Kalal
Cl.2 Licencee,
Gayathri Wines,
Hanagal, Haveri Dist.

69. Y.M.Mirajar
Cl-2 Licencee,
Kundagol
Dharwad Dist.

70. Smt.V.S.Niralagi
Cl-2 Licencee,
Manoj Wine Shop
Market Road,
Savanoor, Dharwad Dist.

71. N.S.Manjunath
Cl-9 Licencee,
Gajanan Bar and Rest.,
Savanoor, Dharwad Dist.

72. B.V.Kumar,
CL 2 Licencee,
Savanoor, DharwadDist.

73.Y.M.Mirajkar,
Cl-2 Licencee,
Savanoor,
Dharwad Dist.

74.Karunakar Shetty
Cl-2 Licencee,
Sampigalli, Hubli Dharwad Dist.

75. M/S.A.J.Pinto
Cl-2 Licencee,
Pinto Wines, by its partner,
M.J.Pinto
Hubli
Dharwad dist.

76.Hilton Wine Centre,
Cl-2 Licencee,
by its partner
Shankukhsa Narayansa Walvekar,
Radhakrishna Galli,
Hubli, Dharwad Dist.

77.M/S.Sringar Peg Bar,
Cl-9 Licencee,
by its partner Ambasa,
Ramachandrasa Habib,
Station Road,
Hubli, Dharwad District.

78.A.R.Habib,
Cl-2 Licencee,
Deshpandenagar.
Hubli, Dharwad Dist.

79.Balachandra P.Habib,
Cl-9 Licencee,
Kaveri Bar,
Anchatageri Oni,
Hubli, Dharwad dist.

80.M/S.Uday Bar,
Cl-9 Licencee,
by its partner
Ramachandrasa Geddusa Dalabhanjan,
Anchatgeri Oni,
Hubli, Dharwad District.

81.P.I.Akalavade,
Cl-2 Licencee,
Old Hubli
Hubli Dharwad District.

82.P.I.Akalaavade
Cl-2 licencee,
Koppikar Road,
Hubli Dharwad District.

83.S.B.Walvekar,
Cl-9 Licencee,
Station Road,
Hubli, Dharwad Dist.

84.M/S.Sri.Renula Wine House,
Cl-2 Licencee,
Coen Road,
Hubli, by its
partner,
Sunil B.Walvekar,
Hubli Dharwad District.

85. M/S. Super Wines,
Cl-2 Licencee,
by its partner,
Deepak T.Pawar
Hubli Dharwad District.

86.M/S.Original Bar and Rest.,
Cl-9 Licencee,
by its partner,
Pradeep Pawar
Swimmin pool complex
Hubli, Dharwad Dist.

87.M/S.Kaveru Peg Bar,
Cl-9 Licencee,
by its partner,
Mohan V.Kabade
Anchatgeri Oni
Hubli, Dharwad Dist.

88. T.Venugopal,
Cl-2 Licencee,
Vidyapeeta Circle,
Channammanakere Layout,
Bangalore.

89.R.Tanagaimalai,
CL-2 Licencee,
Banashankari Wines,
Geeta Colony,
Jayanagar, Bangalore.

90. R.Tanagaimalai
Cl-2 Licencee,
Gandhibazar
Bangalore.

PETITIONERS.

(By Sri.G.K.Bhat, Adv.,)

AND:

1.The State of Karnataka

h

by its Addl., Ch., Secretary
and Prl. Secetary to Govt.,
Vidhanasoudha
Bangalore.

2. The Excise Commissioner in
Karnataka, Vokkaligarasangha Bldg,
Channamma Circle,
Bangalore.

3. The Dy Commr., of Excise,
Bangalore Urban District.
Bangalore.

4. The Dy., Commr.,
Bangalore Urban Dist.

5. The Dy. Commr., of Excise,
Dharwad Dist.

6. The Dy. Commr.,
Dharwad District.

7. The Dy. Commr.,
Gadag District.

8. The Dy Commr.,
Havaeri District.
Haveri.

RESPONDENTS

(By Smt.S.Sujatha HCGP)

These petitions are filed praying to quash
Annexure-G and to delcare that the notification
vide Annexure-G dtd. 18-6-1998 as illegal.

These petitions coming on for preliminary
hearing this day, the court made the following:-

O R D E R

All these writ petitions are disposed of by this common order since the controversy involved is common.

2. The dispute is with regard to enhancement of the licence fee in respect of liquor under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules 1968. An amendment was made in sub-rule (1) of Rule 8 of the said Rules by which the fee was enhanced in respect of different types of licensees. Rule 8A was also inserted on 18-6-1998 providing additional licence fee. Rule 8A reads thus :

" 8A. Additional licence fee.- In respect of a licence granted under these rules an additional licence fee equivalent to fifteen percent of the licence fee levied in respect of each kind of licence under rule 8 shall be levied for a period of two years with effect from the first day of July, 1998 for the purpose of equity investment in the Karnataka Infrastructure Development and Finance Corporation."

The notification dated 18-6-1998 enhancing the licence fee in respect of different categories reads thus :

"... .."

(i) for item (1) the following shall be substituted namely.-

Wholesale Licence:-

(a) If the sale is within the limits of Municipal Corporation having population more than 20 lakhs. Rs.4,50,000/-per year

(b) If the sale is in other areas. 3,75,000/- "

(ii) for item (2), the following shall be substituted, namely,-

(2) Retail shop licence referred to in clause (2) of rule 3, in the case of,-

(a) City Municipal Corporations having population more than 20 lakhs. Rs.1,12,000/- "

(b) Other Corporations. 90,000/- "

(c) City Municipal Council. 80,000/- "

(d) Town Municipal Council/ Town Panchayat. 60,000/- "

(e) Other areas. 45,000/- "

(iii) for item (1) the following shall be substituted, namely,-

(4) Licence to clubs in case of.-

(a) City Municipal Corporation areas having population more than 20 lakhs. Rs.50,000/- "

(b) Other areas. 30,000/- "

(iv) for item 7, the following shall be substituted namely, -

"(7) Hotels and Boarding House Licence referred to in clause (7) of rule 3, in the case of, -

(a) City Municipal Corporation areas having population more than 20 lakhs.

Rs.1,65,000/-
per year.

(b) Other Corporations

Rs.1,42,500/-
per year.

(c) City Municipal Council

Rs.1,05,000/
per year.

(d) Town Municipal Council/
Town Panchayat.

Rs.90,000/-
per year.

(e) Other areas.

Rs.67,500/-
per year.

(v) for item 9, the following shall be substituted, namely, -

"(9) Refreshment from (Bar) Licence in case of, -

(a) City Municipal Corporation areas having population more than 20 lakhs.

Rs.1,35,000/- per year

(b) Other City Municipal Corporation areas.

Rs.1,12,500/- "

(c) City Municipal Council areas.

90,000/- "

(d) Town Municipal Council/
Town Panchayat.

67,000/-

(e) Other areas.

50,000/- "

(IV) for item 13, the following shall be substituted, namely, -

"13) Distributor licence.

Rs. 1,50,000/- "

~~3. Substitution of Rule 8A.-~~

~~For rule 8A of the said rules the following shall be substituted, namely; -~~

~~.. .. . "~~

3. It is submitted that, Rule 8 of the 1968 Rules requires payment of licence fee by the licensee for several kinds of licences and under the original Rules, as incorporated under GSR 90 published in the Mysore Gazette dated 6-3-1969 the licence fee for the whole sale liquor trade was only Rs.5000/- per year if it was in respect of one district and if the area of business was more than one district an additional fee of Rs.500/ was being collected for each one of the district. Likewise, for the retail sales of liquor the prescribed licence fee was Rs.10,000/- per year and for refreshment rooms, the licence fee was prescribed at the rate of Rs.10,000/-. Subsequently the said Rules came to be amended by the 1990 amendment Rules, under which the licence fee was enhanced to Rs.50,000/- per annum in respect of CL-1 licence and an additional fee of Rs.500/- was collected in respect of business carried on by the particular licence in more than one district. Likewise, the licence fee for retail liquor shop as well as refreshment rooms as the case may be were also increased and prescribing the licence fee on the basis of the area such as City Corporation area, City Municipal area, town Municipal council

area and other areas. Ever thereafter also the 1st respondent State Government enhanced the licence fee by way of amendment to Rule 8 of the 1968 Rules. A chart showing the enhancement in the licence fees from 1990-91 in respect of various licences in respect of corporation limits is herewith produced and marked as Annexure-A.

It is further submitted that liquor manufactured by the distilleries will have to pass through various form of licensees to reach the customers. The distilleries will manufacture the liquor and the distributor will have the licence to distribute the liquor produced by various distilleries to the wholesalers in the entire state of Karnataka. The wholesalers will procure the liquor from the distributor and then supply the same to the retailers having form CL-2 or to the Bars having licence in form CL-9 or to the Clubs having licence in form CL-7. The chart showing the flow of liquor in the State of Karnataka from manufacturer to the customer is herewith produced and marked as Annexure-B.

It is submitted that the enhancements periodically made are very arbitrary and fanciful

without regard to the viability of conducting such a business with a such huge licence fee. Periodically whenever such increases were made, the licensees have protested and pointed out the unreasonableness. The Karnataka Wine Merchants Association had also represented and requested Government to desist from such increases of licence fees, but the same were not considered.

CHART showing enhancement of Licence Fees from 1990-91 (in Corporation Limits having population less than 20 lakhs)

Licence fees in Rs.				Sales Tax Deposit
Year	CL-1	CL-2	CL-9	
1990-91	75,000/-	30,000/-	40,000/-	Nil
1991-92	do	30,000/-	40,000/-	Nil
1992-93	75,000/-	40,000/-	40,000/-	Nil
1993-94	75,000/-	40,000/-	40,000/-	Nil
1994-95	75,000/-	40,000/-	40,000/-	Nil
1995-96	200,000/-	50,000/-	50,000/-	Nil
1996-97	200,000/-	50,000/-	50,000/-	Nil
1997-98	250,000/-	60,000/-	75,000/-	Nil
1998-99	375,000/-	90,000/-	1,12,500/-	Equivalent to licence fees of one relevant Excise year.

4. Submissions of the learned Counsel for the petitioners are based mainly on the ground that enhancement of fee is discriminatory and that provisions of Rule 8A are also violative of Article 14 of the Constitution of India, inasmuch as no other dealer of any commodity is required to pay additional fee or the fee of this nature as is being collected under Rule 8A.

5. Learned Counsel on both sides have relied on the Judgment given in the case of KHODAY DISTILLERIES LTD. & ORs. vs. STATE OF KARNATAKA & ORs. (1995 (1) SCC 574), where the following observations in DOONGAJI & CO. (1) vs. STATE OF M.P./1991 Supp (2) SCC 313/ were reproduced as under (para-15):

" It is settled law by several decisions of this Court that there is no fundamental right to a citizen to carry on trade or business in liquor. The State under its regulatory power, has power to prohibit absolutely any form of activity in relation to an intoxicant, its manufacture, possession, import and export. No one can claim as against the State, the right to

carry on trade or business in any intoxicants, nor the State be compelled to part with its exclusive right or privilege of manufacture, sale, storage of liquor. Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Article 14 and any infraction in this behalf at its pleasure is arbitrary violating Article 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to rigour of Article 14. "

6. On the basis of the above observations of the Supreme Court, the only thing which has to be examined is whether there is infraction of the provisions of Article 14 of the Constitution. The above observations were made subject to rigour of Article 14 of the Constitution in view of the earlier decision in the case of HAR SHANKAR vs. DY. EXCISE & TAXATION COMMISSIONER (AIR 1975 SC 1121) and STATE OF M.P. vs. NANDLAL JAISWAL (AIR 1987 SC 251)

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7. If the principles of Article 14 are taken into consideration, then it has to be seen whether the principles of equity enshrined under the provision of the Constitution have been violated or there is infringement of such principle. The legislature is competent to make classification. The classification sought to be made under the Act may affect different categories of persons which are subjected to any tax or fee. The provisions in the excise or taxation laws are also subject to the restriction placed under Article 14 of the Constitution. The classification which has been made here is in respect of the place where business is carried on. If a person is whole sale dealer and the licence is granted in respect of the premises which is under the Corporation limit, a different fee is prescribed, when similar dealer who carries on business in the rural limit. So far as the classification in the same area is concerned, there is no discrimination as the fee remains the same in respect of the licence pertaining to rural or for that reason in respect of persons who are in Corporation limits. The distinction between the village limit or Corporation limit can be said to be a reasonable classification

or based on intelligible differentia. It may be observed that it was a policy decision of the Government and may be experience or in public interest that they might have considered with the fee which has to be realised. If the licensees who are carrying on business in the Corporation limit has been kept at a different footing than that of the persons carrying on business in the rural limit per se it is reasonable classification and cannot be considered as violative of Article 14 of the Constitution. The classification is reasonable with the object of the legislature which is sought to be achieved by giving lesser burden of licence fee to persons who are carrying on business in rural area.

8. A contention is also raised that the enhancement of fee is arbitrary and has to be struck down on that ground. This contention has also no force. Fixation of fee is a policy decision which the delegative authority has to exercise. In respect of the enhancement, if the entire history is examined, on the face of it also cannot be said to be arbitrary. This contention has also no force. This Court in the

case of KARNATAKA WINE MERCHANTS' ASSOCIATION (REG.), BANGALORE & ORs. vs. STATE OF KARNATAKA & ORs. /1995 (4) Kar.L.J. 214/ has held that the licence fee is in the nature of consideration for contract and not fee or tax or compulsory extraction from a party. It was the option of the petitioners to have entered into the contract or not. This contention was rejected and it was held that it does not require interference as the enhancement cannot be said to be arbitrary or mala fide.

9. It is pointed out that fixation of the fee is also arbitrary because the distributor is charged with lesser fee than the whole sale dealer. The area of the distributor is entire State and that of the wholesale dealer is only in a specified area and thus the respondents have not applied their mind while fixing the licence fee. It is the prerogative of the authority for fixing the lesser licence fee for the distributor than that of the wholesaler. Therefore, it is not a case where this Court should interfere with the extra ordinary jurisdiction under Article 226 of the Constitution.

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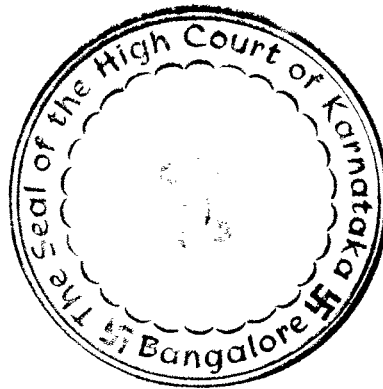
10. Regarding the validity of the provision of Rule 8A it is pointed out that Rule 8A before its amendment was a subject matter of consideration in the case of KARNATAKA WINE MERCHANTS' ASSOCIATION, cited supra and the validity of the said Rule was upheld. Additional licence fee at 15% was charged for Bangalore City and the proceeds of collections under Rule 8A of the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules 1968 were for utilisation towards Bangalore Mass Rapid Transit System. Now this additional fee is to be collected in respect of each kind of licensees under Rule 8 for a period of two years from July 1, 1998. Additional fee takes the same character as that of fee and simply because separate provision is made, its character is not changed. Though the rule making authority in mentioning the object of collection of this additional licence fee has equity investment in the Karnataka Infrastructure Development and Finance Corporation, it was not necessary to mention even the object for which it was collected. There is no hostile discrimination so as to affect the provisions of Article 14 of the Constitution and the fee demanded

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cannot be said to be arbitrary or in any way mala fide. In these circumstances, no case is made out for interference under Article 226 of the Constitution.

Writ Petitions are dismissed.



Sd/-
JUDGE

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